



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2015-0082; 9926-15-Region 9]

**Revisions to the California SIP, Ventura & Eastern Kern Air
Pollution Control Districts; Permit Exemptions**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) and Eastern Kern Air Pollution Control District (EKAPCD) portions of the California State Implementation Plan (SIP). These revisions clarify, update, and revise exemptions from New Source Review (NSR) permitting requirements, for various air pollution sources.

DATE: Any comments must arrive by [Insert date 30 days after the date of publication in the Federal Register].

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2015-0082, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.
2. E-mail: R9airpermits@epa.gov.

3. Mail or deliver: Gerardo Rios (Air-3), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy

location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Larry Maurin, EPA Region IX, (415) 972-3943, maurin.lawrence@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

- A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal, including the dates they were revised by the local air agency and submitted by the California Air Resources Board (CARB).

Table 1 - Submitted Rules

Local Agency	Rule #	Rule Title	Revision Date	Submittal Date
VCAPCD	23	Exemption from Permit	11/12/13	05/13/14
EKAPCD	202	Permit Exemptions	01/13/11	06/21/11

On July 15, 2011 and July 18, 2014, EPA determined that the submittal for EKAPCD Rule 202 and VCAPCD Rule 23, respectively, met the completeness criteria in 40 CFR Part 51 Appendix V. The completeness criteria must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of VCAPCD Rule 23 into the SIP on December 7, 2000 (65 FR 76567). Since the last approval of Rule 23 into the SIP, VCAPCD has adopted revisions on November 11, 2003; April 13, 2004; October 12, 2004; September 12, 2006; April 8, 2008; and April 12, 2011.

EKAPCD Rule 202 was last approved into the SIP on July 6, 1982 (47 FR 29231). Since the last approval of Rule 202 into the SIP, EKAPCD has adopted revisions on April 25, 1983; November 18, 1985; August 22, 1989; April 30, 1990; August 19, 1991; May 2, 1996; January 8, 1998; March 13, 2003; and January 8, 2004.

All of these revisions were submitted to EPA; however, EPA

has not taken action on any of these submittals. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules and rule revisions?

Section 110(a) of the Clean Air Act (CAA) requires states to submit regulations that control volatile organic compounds, nitrogen oxides, particulate matter and other air pollutants which harm human health and the environment. Permitting rules were developed as part of the local air district's programs to control these pollutants.

The purposes of VCAPCD Rule 23 (Exemption from Permit) and EKAPCD Rule 202 (Permit Exemptions) are to identify when a new or modified source is exempted from the requirement to obtain a permit prior to construction. Rule 202 also requires recordkeeping to verify and maintain any exemption.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

The relevant statutory provisions for our review of the new and existing exemptions in the submitted rules include CAA sections 110(a) and 110(l). Section 110(a) requires that SIP rules be enforceable, while section 110(l) precludes EPA approval of SIP revisions that would interfere with any applicable requirement concerning attainment and reasonable

further progress or any other applicable requirement of the Act. In addition, for satisfying CAA section 110(a)(2)(C), we have reviewed the submitted rules for compliance with EPA implementing regulations for NSR, including 40 CFR 51.160 through 40 CFR 51.165.

B. Do the rules meet the evaluation criteria?

1. Attainment Status of VCAPCD and EKAPCD.

Ventura County is designated as a serious nonattainment area for the 2008 and 1997 federal 8-hour ozone National Ambient Air Quality Standards (NAAQS). It is designated as attainment or unclassifiable for all other NAAQS.

Eastern Kern County is designated as a marginal and moderate nonattainment area for the 2008 and 1997 federal 8-hour ozone NAAQS, respectively, and as a serious nonattainment area for the PM₁₀ NAAQS. It is designated as attainment or unclassifiable for all other NAAQS.

2. Minor NSR Permitting Requirements and Analysis.

The revised VCAPCD and EKAPCD rules affect the minor source NSR programs by revising existing exemptions, adding new exemptions, and exempting minor agricultural sources with emissions less than 50 percent of the major source thresholds.

The requirements in 40 CFR 51.160, subsections (a) through (e), provide the basis for evaluating exemptions from NSR permitting. The basic purpose of NSR permitting is set forth in

40 CFR 51.160(a), requiring NSR SIPs to set forth legally enforceable procedures that enable the State or local agency to determine whether the construction or modification of a stationary source would result in a violation of applicable portions of the control strategy, or would interfere with attainment or maintenance of a NAAQS. Section 51.160(e) provides that the procedures must identify types and sizes of stationary sources that will be subject to NSR permitting review. We view this provision as allowing a State to exempt certain types and sizes of stationary sources so long as the program continues to serve the purposes outlined in 40 CFR 51.160(a). Thus, the revised and new exemptions discussed in detail in the TSDs, and the exemptions for non-major agricultural sources whose actual emissions (excluding fugitive emissions) are less than 50 percent of the major source thresholds are approvable so long as the minor source permitting programs (i.e. including the exemptions) continue to provide the necessary information to allow the Districts to determine whether construction of new or modified stationary sources would result in a violation of applicable portions of the control strategies or would result in interference with attainment or maintenance of a NAAQS.

Under 40 CFR 51.160, the Districts have discretion in conducting the minor sources permitting programs to exempt certain small or de minimus sources. Congress directed the

States and Districts to exercise the primary responsibility under the CAA to tailor air quality control measures, including minor source permitting programs, to the State's needs. See *Train v. NRDC*, 421 U.S. 60, 79 (1975) (States make the primary decisions over how to achieve CAA requirements); *Union Electric Co. v. EPA*, 427 U.S. 246 (1976); *Greenbaum v. EPA*, 370 F.3d 527 (6th Cir. 2006).

EPA has reviewed the submitted VCAPCD and EKAPCD rules in accordance with CAA Section 110(a) and 40 CFR 51.160 as described above. In our evaluation, EPA has determined that the emissions which may result from the revised and new exemptions set forth in the submitted VCAPCD and EKAPCD rules meet acceptable de minimus criteria as allowed in 40 CFR 51.160(e). See the attached TSDs for each district for more information on these revised and new exemptions.

The submitted rules also add a new exemption for new or modified minor agricultural sources whose actual emissions (excluding fugitive PM₁₀) would be less than 50% of the applicable major source thresholds. With respect to such minor agricultural sources, we conclude that this exemption is approvable because, as discussed in more detail below in addressing CAA Section 110(l), the exemption will not result in a violation of applicable portions of the control strategies and would not result in interference with attainment or maintenance

of a NAAQS.

EPA has also evaluated the revised VCAPCD Rule 23 and EKAPCD Rule 202 for consistency with CAA Section 110(1) requirements. As noted above, the new exemptions in Rule 23, would result in de minimus increases in emissions. For the new exemption for new or modified minor agricultural sources whose actual emissions (excluding fugitive PM₁₀) would be less than 50% of the applicable major source thresholds, EPA has determined that this exemption would not interfere with reasonable further progress and attainment of any of the NAAQS in Ventura County or any other applicable requirement of the CAA and thus is approvable under sections 110(1) because of (1) the limited nature of all new exemptions, (2) the presence of other regulatory controls for exempt agricultural sources, (3) the low background concentrations for the NAAQS pollutants in Ventura County other than ozone, and (4) the fact that the submitted ozone plan for Ventura County does not rely on NSR controls for minor agricultural sources and shows that the downward trend in ozone precursor emissions in Ventura County is predicted to continue well into the future.

The new exemptions in EKAPCD Rule 202 will result in de minimus increases in emissions and would result in a strengthening of the SIP. For the new exemption for new or modified minor agricultural sources whose actual emissions

(excluding fugitive PM₁₀) would be less than 50% of the applicable major source thresholds, EPA has determined that this exemption would not interfere with reasonable further progress and attainment of any of the NAAQS in the EKAPCD or any other applicable requirement of the CAA and thus is approvable under CAA Section 110(1). Similar to Ventura County, these revisions are approvable for EKAPCD under section 110(1) of the Act because of (1) the limited nature of all new exemptions, (2) the narrowing of several existing exemptions, (3) the presence of other regulatory controls for exempt agricultural sources, (4) the low ambient concentrations for the NAAQS pollutants in EKAPCD other than ozone, and (5) emissions projections that assume no NSR controls for minor agricultural sources yet the emissions projections decline or hold steady well into the future for PM₁₀ and the ozone precursors.

The TSDs for each District rule have more information on our evaluation.

C. EPA recommendations to further improve the rules.

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

D. Public comment and final action.

Because EPA considers the submitted rules to fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept

comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the VCAPCD and EKAPCD rules regarding exemptions from permit requirements discussed in section I.A of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Intergovernmental relations, Incorporation by reference, Ozone,
Particulate matter, Reporting and recordkeeping requirements,
Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: March 20, 2015.

Jared Blumenfeld,
Regional Administrator,
Region IX.

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